

In the Matter of)	
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CERTAIN INK JET PRINT CARTRIDGES)	Inv. No. 337-TA-446
AND COMPONENTS THEREOF)	
)	

AGENCY: U.S. International Trade Commission.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (ID) of the presiding administrative law judge (ALJ) that finds a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000.

On January 19, 2001, the Commission instituted this investigation based on a complaint filed by Hewlett-Packard Company (“HP”), alleging a violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain inkjet print cartridges and components thereof by reason of infringement of U.S. Letters Patent 4,827,294; 4,635,073; 4,680,859; 4,872,027; 4,992,802; and 5,409,134. 66 Fed. Reg. 7783 (January 25, 2001). The following five firms were named as respondents: Microjet Technology Co., Ltd. of Taipei, Taiwan; Printer Essentials of Reno, Nevada; Price-Less Inkjet

Cartridge Company of Port Charlotte, Florida; Cartridge Hut and Paperwork Plus of Sun City, California; and ABCCo.net, Inc. of Port Charlotte, Florida.

Based on joint stipulations and proposed consent orders, the ALJ issued IDs terminating the investigation as to Printer Essentials (Order No. 7, dated May 11, 2001) and as to Cartridge Hut (Order No. 15, dated October 12, 2001). These IDs became Commission final determinations, pursuant to 19 C.F.R. § 210.42(h)(3).

On August 21, 2001, the ALJ issued an ID (Order No. 12) granting HP's motion for summary determination on the economic prong of the domestic industry requirement for all patents at issue. This ID became a Commission final determination, pursuant to 19 C.F.R. § 210.42(h)(3).

On October 24, 2001, HP filed a motion to terminate the investigation as to its infringement allegations based on claim 5 of U.S. Letters Patent 4,635,073, claim 2 of U.S. Letters Patent 4,827,294 and claims 12-14 of U.S. Letters Patent 5,409,134. On November 15, 2001, the ALJ issued an ID (Order No. 17) terminating the investigation as to the patent claims that were the subject of HP's motion. These IDs were not reviewed by the Commission, and thus became the determinations of the Commission, pursuant to 19 C.F.R. § 210.42(h)(3).

The ALJ issued his final ID, along with a recommended determination on remedy and bonding, on January 25, 2002, concluding that there was a violation of section 337, based on his findings that (a) the accused devices infringe claims of five of the six patents at issue, U.S. Letters Patent 4,827,294, 4,680,859, 4,872,027, 4,992,802, and 5,409,134; and (b) that a domestic industry exists with respect to each of these patents. The ALJ found no infringement of U.S. Letter Patent 4,635,073, and he found that HP had not satisfied the technical prong of the domestic industry requirement with respect to this patent.

On February 14, 2002, complainant HP and the Commission investigative attorney ("IA") petitioned for review of parts of the ID concerning the '073 patent. No responses to these petitions for review were filed.

Having examined the record in this investigation, including the ID, and the petitions for review, the Commission has determined to review:

- (1) the ID's construction of the asserted claim of the '073 patent;
- (2) the ID's finding of no infringement with respect to the '073 patent; and
- (3) the ID's findings with respect to the technical prong of the domestic industry requirement with respect to the '073 patent.

The Commission has determined not to review the remainder of the ID. The Commission does not request further briefing on the issues that it has determined to review.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry that either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than 14 days from the date of issuance of this notice. Response submissions must be filed no later than seven days after the deadline for filing the main submissions. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should

be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R § 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42 -.45 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42 -.45).

By order of the Commission.

Marilyn R. Abbott
Acting Secretary

Issued: March 12, 2002